

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

FULLER'S EARTH PRODUCING
AND MARKETING INDUSTRY

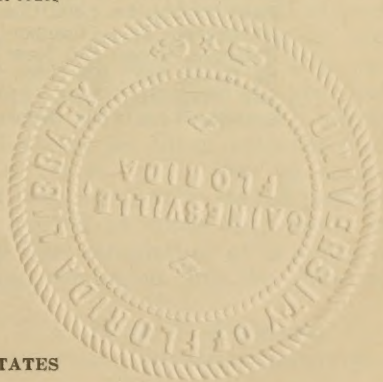
AS APPROVED ON MARCH 23, 1934



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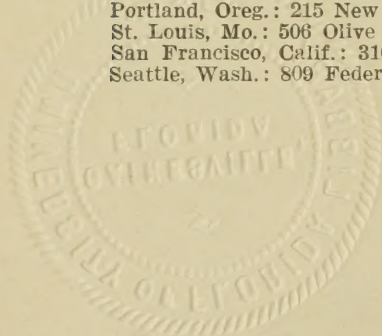


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Approved Code No. 356

CODE OF FAIR COMPETITION

FOR THE

**FULLER'S EARTH PRODUCING AND MARKETING
INDUSTRY**

As Approved on March 23, 1934

ORDER

**APPROVING CODE OF FAIR COMPETITION FOR THE FULLER'S EARTH
PRODUCING AND MARKETING INDUSTRY**

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of a Code of Fair Competition for the Fuller's Earth Producing and Marketing Industry, and hearings having been duly held thereon and the annexed report on said Code, containing the findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, I, Hugh S. Johnson, Administrator for Industrial Recovery, pursuant to authority vested in me by Executive Orders of the President, including Executive Order No. 6543-A, dated December 30, 1933, and otherwise; do hereby incorporate by reference said annexed report and do find that said Code complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act; and do hereby order that said Code of Fair Competition be and it is hereby approved; provided, however, that the provisions of Article VIII, (Section I) insofar as they prescribe a waiting period between the filing with the Code Authority and the effective date of revised price lists or revised terms and conditions of sale be and they are hereby stayed pending my further Order either within a period of sixty days from the effective date of this Code or after the completion of a study of open price associations now being conducted by the National Recovery Administration.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended:

A. R. GLANCY
Division Administrator.

WASHINGTON, D.C.,
March 23, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on the Code of Fair Competition for the Fullers Earth Producing and Marketing Industry, a hearing on which was conducted in Washington on the second of January, 1934, and reconvened on the fifth of January, 1934, in accordance with the provisions of the National Industrial Recovery Act.

PROVISIONS OF THE CODE AS TO WAGES AND HOURS

This Code provides for a maximum work week of forty hours as averaged over a six months period, forty-eight hours in any one week, and a maximum working day of ten hours. Exceptions are provided for watchmen, who may work fifty-six hours per week, and for engineers, firemen, electricians and laboratory staff, who are limited in number and may work forty-eight hours per week. Limitations on working time do not apply to executives, managers or supervisors who earn not less than \$35.00 per week, nor to traveling salesmen, nor to employees engaged in emergency maintenance or repair work; the latter class being paid at the rate of time and one-half for all time worked in excess of the basic maximum working limits.

The Code provides for minimum hourly rates of pay of 35 cents in the North, 30 cents in the intermediate zone, and 24 cents in the South. A provision is made for maintaining existing wage differentials. Clerical and office employees are to be paid not less than \$15.00 per week in the North, nor less than \$14.00 per week elsewhere.

No person under sixteen years of age may be employed, and no person under eighteen years of age may work at hazardous or unhealthy occupations.

ECONOMIC EFFECTS OF THE CODE

The Research and Planning Division estimates that there were about 1,013 employees in this Industry during 1933, and the Code Committee estimates that the 1932 invested capital was \$3,660,000 with a production volume of about \$1,360,000.

Under the existing low volume of production, the codal limits on working time will not be effective in spreading employment to any important degree. However, with any increase in business, the hourly and weekly limits provided will require additional employees. The codal minimum wage provisions represent a substantial increase over rates being paid before August first, 1933, and an increase over minimum rates in 1929. From available information it appears that codal weekly incomes, despite shorter hours worked, will be

greater than the average 1929 weekly income adjusted to present purchasing power.

FINDINGS

The Assistant Deputy Administrator in his final report to me on said Code having found as herein set forth and on the basis of all the proceedings in this matter;

I find that:

(a) Said Code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among the trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) Said Industry normally employs not more than 50,000 employees; and is not classified by me as a major industry.

(c) The Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant association is an industrial association truly representative of the aforesaid Industry; and that said association imposes no inequitable restrictions on admission to membership therein.

(d) The Code is not designed to and will not permit monopolies or monopolistic practices.

(e) The Code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said Code.

For these reasons, therefore, I have approved this Code.

Respectfully,

HUGH S. JOHNSON,
Administrator.

MARCH 23, 1934.

CODE OF FAIR COMPETITION FOR THE FULLER'S EARTH PRODUCING AND MARKETING INDUSTRY

ARTICLE I—PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are established as a Code of Fair Competition for the Fuller's Earth Producing and Marketing Industry, and shall be the standard of fair competition for such industry and shall be binding upon every member thereof.

ARTICLE II—DEFINITIONS

1. The term "Fuller's Earth" means a natural claylike mineral substance used primarily in granular form for decolorizing or filtering oils and fats.

2. The term "Industry" as used herein includes the mining, and/or manufacturing, and/or selling by those who mine and/or manufacture Fuller's Earth as herein defined and such related branches or subdivisions thereof as may from time to time be included under the provisions of this Code by the President after such notice and hearing as he may prescribe.

3. The term "Member of the Industry" includes any individual, partnership, association, corporation, or other person engaged in the industry, either as an employer or on his or its own behalf. In the case of members of the industry comprising a complete or integrated unit in such industry, whether by stock ownership, affiliation or otherwise, such members shall be construed to mean a single unit or member and shall be so considered in the administration of this Code.

4. The term "Employee" as used herein includes any and all persons engaged in the industry, however compensated, except a member of the industry.

5. The term "Employer" as used herein includes anyone by whom any such employee is compensated or employed.

6. The terms "Act" and "Administrator" as used herein shall mean, respectively, Title I of the National Industrial Recovery Act and the Administrator for Industrial Recovery.

7. The term "Period of free credit" means the period of time between the date of a shipment of a product to the purchaser and the date from and after which such purchaser shall be required to pay the purchase price of such product.

ARTICLE III—HOURS

1. Except those employees who are specifically provided for elsewhere in this Article, no employee shall be permitted to work in excess of forty (40) hours per week averaged over a semi-annual

period, either from January first to June thirtieth or from July first to December thirty-first, and the maximum hours of work for any employee during any one week shall not exceed forty-eight (48) hours. Except those employees specifically provided for elsewhere in this Article, no employee shall be permitted to work in excess of ten (10) hours in any twenty-four (24) hour period.

2. Watchmen shall not be employed more than fifty-six (56) hours in any one week.

3. Engineers, firemen, electricians and laboratory staff shall not be permitted to work in excess of forty-eight (48) hours in any one week; provided, however, that this tolerance of working time in excess of the hours provided in Section 1 of this Article shall apply to not more than ten percent (10%) of the total number of employees in any one plant, or to not more than four (4) employees in any one plant, whichever number is the greater in any case.

4. No person employed in clerical or office work shall be permitted to work in excess of forty (40) hours in any one week.

5. The provisions of this Article shall not apply to persons employed in any executive, managerial or supervisory capacity, or to technical assistants, who earn not less than \$35.00 per week; or to traveling salesmen.

6. The maximum hours fixed in Section 1 of this Article shall not apply to any employee on emergency maintenance or emergency repair work involving break-downs or protection of life or property, but in any such case at least one and one-half times his normal rate shall be paid for hours worked in excess of the maximum hours therein provided.

7. No employer shall knowingly permit any employee to work for any time which, when totaled with that already performed with another employer, or employers, exceeds the maximum permitted herein.

ARTICLE IV—MINIMUM WAGE

1. No employee shall be paid at less than the hourly rate of thirty-five cents (35¢) with the following exceptions:

(a) In the States of North Carolina, Virginia, Kentucky, Arkansas, Oklahoma, Texas and Louisiana no such employee shall be paid at less than the hourly rate of 30¢.

(b) In the States of Mississippi, Alabama, Florida, Georgia and South Carolina no such employee shall be paid at less than the hourly rate of 24¢.

2. Rates of pay in excess of the minimum herein prescribed shall be increased by a sum which shall at least maintain the differentials existing on July fifteenth, 1933; and in no case shall hourly rates of pay be reduced.

3. No employee in clerical or office work shall be paid less than at the rate of \$15.00 per week, except that in the States specified in subsections (a) and (b) of Section 1 of this Article such employees shall be paid at the rate of not less than \$14.00 per week.

4. This Article establishes a minimum rate of pay, regardless of whether an employee is compensated on a time rate, piece work or other basis.

ARTICLE V—GENERAL LABOR PROVISIONS

1. No person under sixteen (16) years of age shall be employed in the industry. No person under eighteen (18) years of age shall be employed at operations or occupations which are hazardous in nature or dangerous to health. In any State an employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate or permit duly issued by the Authority in such State empowered to issue employment or age certificates or permits showing that the employee is of the required age.

2. It is provided:

(a) That employees shall have the right to organize and bargain collectively, through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing.

(c) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

3. No employer shall reclassify employees or duties of occupations performed, or engaged in any other subterfuge, for the purpose of defeating the provisions of the Act or of this Code.

4. No provisions in this Code shall supersede any State or Federal law which imposes more stringent requirements on employers as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance, or fire protection, than are imposed by this Code.

5. No employee shall be required as a condition of employment to trade at a store owned or specified by an employer.

6. Employees, other than maintenance, supervisory men or those necessary to protect property, shall not be required as a condition of employment to live in houses rented from or specified by the employer.

7. All employers shall post and thereafter maintain complete copies of this Code in conspicuous places, easily accessible to employees.

8. Every employer shall make reasonable provisions for the safety and health of his employees at the place and during the hours of their employment. Standards for safety and health shall be submitted by the Code Authority to the Administrator for approval within six months after the effective date of this Code.

ARTICLE VI—ORGANIZATION, POWERS, AND DUTIES OF THE CODE
AUTHORITY

1. There shall forthwith be constituted a Code Authority consisting of four (4) members to be chosen by the Industry through a fair method of selection approved by the Administrator.

2. In addition to membership as above provided, there may be not more than three members, without vote, to be appointed by the Administrator to serve for a term of from six months to one year as specified in the order of appointment. Administrative members shall be notified of, and may sit at all meetings of the Code Authority.

3. In order that the Code Authority shall at all times be truly representative of the Industry and in other respects comply with the provisions of the Act, the Administrator may prescribe such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of the Code Authority.

4. Members of the industry shall be entitled to participate in and share the benefits of the activities of the Code Authority and to participate in the selection of the members thereof by assenting to and complying with the requirements of this Code and sustaining their reasonable share of the expenses of its administration. Such reasonable share of the expenses of administration shall be determined by the Code Authority, subject to review by the Administrator, on the basis of volume of business and/or such other factors as may be deemed equitable.

5. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent or employee of the Code Authority. Nor shall any member of the Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own willful misfeasance or non-feasance.

6. The Code Authority shall have the following further powers and duties:

(a) To insure the execution of the provisions of this Code and provide for the compliance of the industry with the provisions of the Act.

(b) To adopt by-laws and rules and regulations for its procedure and for the administration and enforcement of the Code.

(c) To obtain from members of the industry such information and reports as are required for the administration of the Code and to provide for submission by members of such information and reports as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act, which information and reports shall be submitted by members to such administrative and/or government agencies as the Administrator may designate; provided that nothing in this Code shall relieve any member of the industry of any existing obligations to furnish reports to any government agency. No individual reports shall be disclosed to any other member of the industry or any other party except to such governmental agencies as may be directed by the Administrator.

(d) To use such trade associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein, provided that nothing herein shall relieve the Code Authority

of its duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to and comply with the provisions hereof.

(e) To make recommendations to the Administrator for the coordination of the administration of this Code with such other codes, if any, as may be related to the industry.

(f) To secure from members of the industry an equitable and proportionate payment of the reasonable expenses of maintaining the Code Authority and its activities.

(g) To cooperate with the Administrator in regulating the use of any N.R.A. insignia solely by those members of the industry who have assented to, and are complying with, this Code.

(h) To recommend to the Administrator further fair trade practice provisions to govern members of the industry in their relations with each other or with other industries and to recommend to the Administrator measures for industrial planning, including stabilization of employment.

7. The Code Authority may recommend modification of, or amendments to, this Code, which shall become parts of this Code upon approval by the Administrator, after such notice and hearing as he shall prescribe.

8. If the Administrator shall determine that any action of the Code Authority or any agency thereof may be unfair or unjust or contrary to the public interest, the Administrator may require that such action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by such Code Authority or agency pending final action, which shall not be effective unless the Administrator approves or unless he shall fail to disapprove after thirty days notice to him of intention to proceed with such action in its original or modified form.

9. In addition to information required to be submitted to the Code Authority, members of the industry shall furnish to such Federal and State agencies as the Administrator may designate, such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act, and nothing in this Code shall relieve any person of any existing obligation to furnish reports to Government agencies.

10. An appeal from any action by the Code Authority affecting the rights of any employer or employee in the industry may be taken to the Administrator.

ARTICLE VII—TRADE PRACTICE RULES

The following shall constitute unfair competition and a violation of this Code:

1. For any member to sell or offer to sell any product of the industry at a price below his own cost of production as determined on the basis of a cost accounting system approved by the Code Authority and subject to approval by the Administrator; provided, however, any member may sell at less than his cost to meet the price of a competitor. This paragraph shall not apply to any product produced as a byproduct in the manufacture of standard granular grades.

2. To give secret rebates, refunds, credits, unearned discounts, whether in the form of money or otherwise, or to extend to any purchasers services or privileges not extended to all purchasers under like terms or conditions.

3. No member of the industry shall give, permit to be given, or directly offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented party, without the knowledge of such employer, principal or party. This provision shall not be construed to prohibit free and general distribution of articles commonly used for advertising, except so far as such articles are actually used for commercial bribery as hereinabove defined.

4. To make or cause or permit to be made or published any false or deceptive statement concerning the grade, quality, quantity, substance, character, nature, origin, size or preparation of any product of the industry having the tendency to mislead or deceive purchasers or to affect injuriously the business of competitors.

5. To sell or offer to sell any grade of product contrary to screen standards which may be established by the Code Authority subject to approval of the Administrator.

6. To make an allowance for sifting in excess of two pounds per bag of a minimum shipping weight of 120 pounds and proportionately less for bags of smaller content.

7. To allow a rebate for bags returned different from the price originally charged or to allow freight on returned bags.

8. To extend a period of free credit in excess of thirty (30) days; provided that a member of the industry may offer credit terms to customers buying at intervals during the month, permitting payment on or before the fifteenth day of the month subsequent to that in which shipment is made.

9. Every member of the industry shall insert a provision in all contracts made by him for operating work in connection with mining and/or manufacturing Fuller's Earth within the industry, whereby the contractor agrees that he or his subcontractor shall be subject to the labor provisions of this Code.

ARTICLE VIII—PRICE LISTS

1. Each member of the industry shall within ten (10) days after the effective date of the Code file with the Code Authority and with the Administrator, if required, a list of its selling prices and discounts, if any are allowed, for its various grades, which shall become effective on the date of filing thereof. None of the prices or discounts shown in any list filed by any member of the industry, as herein provided, shall be changed, except by filing by such member with the Code Authority a new list of his prices and discounts to be changed, which shall become effective on the effective date therein specified, which date shall be five days after the date on which such new list shall have been filed; provided, however, that any member may file with the Code Authority a revised list to meet lower prices, or higher discounts, or both, of a competitor, which revised list may

become effective on the same date that the competitor's revised list becomes effective. Lists of prices and discounts filed with the Code Authority shall be open to inspection by any interested person.*

ARTICLE IX—MONOPOLIES

1. No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

ARTICLE X—AMENDMENTS

1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of Section 10 (b) of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule, or regulation, issued under Title I of said Act, and specifically, but without limitation, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

2. This Code, except as to the provisions required by the Act, may be modified on the basis of experience or changes in circumstances, such modifications to be based upon application to the Administrator, after such notice and hearing as he shall specify, and to become effective on approval of the Administrator.

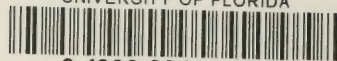
ARTICLE XI—EFFECTIVE DATE

1. This Code shall become effective seven (7) days following its approval by the President.

Approved Code No. 356.
Registry No. 1013-10.

* See paragraph 2 of order approving this Code.

UNIVERSITY OF FLORIDA



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